IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 185

CHARLES E. TREIBLY,

Petitioner,

vs.

DR. WINFRED OVERHOLSER, SUPERINTENDENT, ST. ELIZABETHS HOSPITAL,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

J. AUSTIN LATIMER,
H. EUGENE BRYAN,
Counsel for Petitioner.

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Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Charles E. Treibly, respectfully prays that a writ of certiorari issue in the above-captioned case to review the judgment of the United States Court of Appeals for the District of Columbia rendered therein February 20, 1945 (R. 18). The time for filing this petition was extended on May 19, 1945 until June 29, 1945 (R. 23).

Opinions Below

The District Court wrote no opinion but made findings of fact as follows (R. 6):

> "That the commitment of Charles E. Treibly to Saint Elizabeths Hospital upon order of the Secretary of the Navy was unlawful and violative of due process of law in that Mr. Treibly was committed without a hearing upon his mental condition."

The opinion of the Court of Appeals is reported in 147 F. (2d) No. 5 Page 705 (R. 9).

Jurisdiction

Jurisdiction of the Court is invoked under Section 240 (a) of the Judicial Code, as amended (c. 229, 43 Stat. 936, 938 as amended; 28 U. S. C. 347). The judgment of the Court of Appeals was entered February 20th, 1945 (R. 18) and the time for filing this petition was extended on May 19, 1945 until June 29, 1945 (R. 23).

Questions Presented

1. Whether a member of the United States Navy is by virtue of the Constitution of the United States entitled to a hearing on his mental condition before being received and confined at an institution for the insane.

2. Whether a member of the United States Navy, committed to a Naval hospital under the supervision of Naval officers, by the Secretary of the Navy is by virtue of his being a member of the Navy, barred access to the Courts for inquiring as to his mental condition.

Statutes Involved

24 U. S. C. 191: "The superintendent (of St. Elizabeths Hospital) upon the order of the Secretary of War, of the

Secretary of the Navy, and of the Secretary of the Treasury, respectively, shall receive and keep in custody until they are cured, or removed by the same authority which ordered their reception, insane persons of the following descriptions:

1. Insane persons belonging to the Army, Navy, Marine Corps and Coast Guard.

2. Civilians employed in the Quartermaster Corps of the Army who may become insane while in such employment.

The general federal habeas-corpus statute, which provides, 28 U. S. C., c. 14 (Revised Statutes, c/13 (751 et seq.)):

> "16-901 (24:201). *Petition—Sufficiency—Issuance of writ by court or justice.*
>
> "Any person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or any person in his or her behalf, may apply by petition to the District Court of the United States for the District of Columbia, or any justice thereof, for a writ of habeas corpus, to the end that the cause of such commitment, detainer, confinement, or restraint may be inquired into; and the court or the justice applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant such writ, directed to the officer or other person in whose custody or keeping the party so detained shall be, returnable forthwith before said court or justice. (Mar. 3, 1901, 31 Stat. 1372, ch. 854, 1143.)"

Statement

Petitioner, Charles E. Treibly, a Lt. Commander in the Navy, was placed on the retired list in November 1922. A year later he was received at Saint Elizabeths hospital by direction of the Secretary of the Navy. In June 1926 he filed a petition in the District Court of the District of Co-

lumbia (then known as the Supreme Court of the District of Columbia) seeking his release and on hearing he was ordered to be released and was released. The Superintendent of Saint Elizabeths hospital appealed from that order and the United States Court of Appeals for the District of Columbia in 1927 reversed the lower court (*White* v. *Treibly*, 57 App. D. C. 238, 19 F. (2d) 712). In June 1927 Treibly was again received at Saint Elizabeths hospital on an order of the Secretary of the Navy, identical with the one issued in 1923. That order recites as follows (R. 8):

> "From: Surgeon General (By direction of the Secretary).
>
> To: Superintendent, Saint Elizabeths Hospital, Washington, D. C.
>
> Subject: Insane patient
>
> Please receive into the Saint Elizabeths Hospital, under your charge, Charles Ellsworth Treibly, Lt. C., U. S. Navy Retired, inmate of U. S. Naval Hospital, Washington, D. C.
>
> The Commandant of the Navy Yard, Washington, D. C., will have him delivered to you with this order.
>
> (Signed) EDWARD R. STITT.
>
> Certified a true copy:
>
> (S.) P. M. LEHMAN, *Chief Clerk.*"

From this confinement he sought his release in January 1945 by a petition alleging that he was of sound mind and that his confinement was illegal. For that reason and the further reason that "he has at no time been found to be of unsound mind by any medical board or by the Commission of Mental Health in and for the District of Columbia. The writ of habeas corpus issued and the Superintendent of Saint Elizabeths in his answer admitted that appellant had

been admitted to the hospital on order of the Secretary of the Navy without having been adjudged of unsound mind in the District of Columbia and alleged that appellant was of unsound mind. The District Court of the U. S. for the District of Columbia upon a hearing that his commitment was without due process ordered his release on a finding that "the commitment of Charles E. Treibly upon order of the Secretary of the Navy was unlawful and violative of due process of law in that Mr. Treibly was committed without a hearing upon his mental condition." Appellant was forthwith released (R. 6).

The opinion of the District Court was reversed by the Court of Appeals.

The United States District Court of Appeals for the District of Columbia in its opinion stated "whatever may be necessary by way of due process for a valid commitment of a civilian, the procedure authorized by the statute was sufficient in the present case" (R. 10). It was urged by appellant (appellee below) that the least the government could do in cases of this kind is to show that Treibly was being detained as the result of the action of a properly qualified military tribunal where judgment was delivered after a proper hearing. There was nothing before the court excepting the order for his transfer. There was and is nothing to show a legal detention. It was further contended that under the Constitution, Congress has the power to make rules for the government and regulation of the military and naval forces (Article 1, Section 8, C. I. 14 and the rights of a person in those forces are in some respects different from those of private citizens. However, under the Fifth Amendment, no person shall be deprived of life, liberty or property without due process of law; that merely because a person is in the military forces of the United States he does not surrender every vestige of those rights

guaranteed to him under the Constitution; that a man in the military forces cannot be committed to an insane asylum without a hearing of any kind regarding his mental status —no showing that he voluntarily agreed to his commitment, never given notice that such steps were contemplated, never given an opportunity to be heard in opposition thereto, never given the opportunity of having the effective assistance of counsel, never given the opportunity of summoning witnesses in his own behalf. In *Burton* v. *Platter,* 53 Fed. 901, 904, the court stated regarding due process, "in judicial proceedings due process must be a course of legal proceedings according to those rules and forms which have been established for the protection of private rights. It must be one that is appropriate and just to the parties. It must be pursued in the ordinary manner prescribed by law. It must give to the parties to be affected an opportunity to be heard respecting the justice of the judgment sought. It must be one which hears before it condemns, proceeds upon inquiry, and renders judgment only after trial."

Regarding what constitutes due process for a member of the Army or Navy, the Supreme Court in *Reeves* v. *Ainsworth,* 219 U. S. 296, 55 L. ed. 225, 228 (affirming 28 Appeals D. C. 157) said "what is due process of law must be determined by circumstance. To those in the military or naval service of the United States the military law is due process. The decision of a military tribunal acting within the scope of its lawful powers cannot be reviewed or set aside by the Courts." There was no showing that Treibly was ever given a hearing of any kind before any board or other military tribunal acting within the scope of its lawful powers.

The finds of the Court in this case constitute a virtual rejection of the opinion of the Court in the *Barry* case (*Barry* v. *Hall,* 68 App. D. C. 352).

In the *Barry* case, Barry was committed under Title 24, Sec. 193, which provides:

> "Insane patients of the Public Health Service shall be admitted into St. Elizabeths Hospital upon the Order of the Secretary of the Treasury, and shall be cared for therein until cured or until removed by the same authority * * *"

The similarity of the two statutes is too apparent for argument. This Court in the *Barry* case said (354, 355):

> "The appellant in the instant case is held under a statute which makes no provision for a hearing and opportunity for defense, and so far as this record shows he had no hearing or opportunity for defense in respect to his transfer to St. Elizabeths as an insane person. The statute, indeed, is by its plain terms not even intended as a lunacy commitment statute. It assumes insanity already determined and merely authorizes * * * transfer * * *. Moreover to construe the statute in question—even if it were susceptible of such a meaning—as a lunacy statute, so that on order of the Secretary of the Treasury thereunder transferring a Public Health Service patient to St. Elizabeths would operate as an adjudication of insanity and a warrant of confinement, would make the statute void for unconstitutionality in denying due process."

The Court then attempted to distinguish between commitments of Naval officers to St. Elizabeths hospital and to other hospitals when they said "if appellee (appellant here) were confined in a Naval hospital under the supervision of Naval officers, the Courts would be barred from inquiring not only concerning the treatment prescribed, no matter how long continued, but also concerning the results of the treatment and appellee's present mental condition." The fateful result of such a proposition needs no argument. It would be a summary denial of all Constitutional rights and guarantees.

Specification of Errors to Be Urged

The Court below erred in finding:

1. That a member of the Armed Forces can be committed to Saint Elizabeths Hospital for the insane by order of the Secretary of the Navy without his first having a hearing on his mental condition.

2. That a member of the United States Navy can be confined by order of the Secretary of the Navy for any reason, for any period of time and by virtue of his being a member of the Navy is barred access to the Courts for inquiring as to his mental condition.

Reasons for Granting the Writ

The problem of judicial interference with the personnel of the Armed Forces largely influenced the Court below in holding petitioner not entitled to a hearing on his mental condition prior to his commitment. It proceeded upon a sociological hypothesis that because one is in the military service he is of necessity and will, as a matter of fact, be accorded all rights due him when it stated "it is the purpose of the Army and Navy that men suffering from mental diseases shall not be turned back into civilian life until every possible effort has been made toward their rehabilitation and cure. In this way more than in any other it has been recognized that people suffering from mental diseases should be placed in the same category with those wounded in battle or those who become sick or disabled in the service from other causes. It is true that there was an ancient stigma attached to mental disease which did not attach to physical disease. One of the things we must learn as a result of this war is that there is no legitimate grounds for such a stigma. No conceivable purpose would be served by a federal court's rejection of skilled military judgment on

mental disease. At the end of this war, the military physicians will know more about psychoses than any other group. To repudiate their judgment, in favor of civilian psychiatric testimony would create a constant interference with the process of rehabilitation. Federal courts have no such competency in judging between psychoses or between that testimony of psychiatrists to make this a useful procedure. Following such logic would necessarily mean that succeeding generations must be bound by the wisdom and experience gleaned by Naval physicians during their service in this war. That no other group of psychiatrists are competent to controvert the opinions and findings of this select group.

1. The Court should grant the Writ of Certiorari to determine whether those in the Armed Services of the United States are being accorded due process of law by their superiors in their dealings with them.

2. The Court should grant the Writ to determine what appeal or rights those in the Armed Services have from the orders of their superiors when such orders mean their confinement and imprisonment in hospitals as insane patients.

Conclusion

The Writ of Certiorari should be granted.

Respectfully submitted,

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 185

CHARLES E. TREIBLY, PETITIONER

v.

DR. WINFRED OVERHOLSER, SUPERINTENDENT, ST. ELIZABETHS HOSPITAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 9–18) is reported at 147 F. 2d 705.

JURISDICTION

The judgment of the court of appeals was entered February 20, 1945 (R. 18–19). On May 19, 1945, by order of the Chief Justice, the time to file a petition for a writ of certiorari was extended

to June 29, 1945 (R. 23). The petition for a writ of certiorari was filed June 29, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Secretary of the Navy may order a member of the Navy to be treated in St. Elizabeths Hospital as an insane person without allowing him a hearing at which he has the right to summon witnesses and have the effective assistance of counsel.

STATUTE INVOLVED

R. S. § 4843 (24 U. S. C. 191) provides in pertinent part as follows:

> The superintendent [of St. Elizabeths Hospital], upon the order of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Treasury, respectively, shall receive, and keep in custody until they are cured, or removed by the same authority which ordered their reception, insane persons of the following descriptions:
>
> First. Insane persons belonging to the Army, Navy, Marine Corps, and Coast Guard.
>
> * * * * *

STATEMENT

Petitioner, a Lieutenant Commander in the Navy (retired), was received at St. Elizabeths Hospital in 1923, upon the order of the Secretary of the Navy. In June 1926, he filed a petition for a writ of habeas corpus in the then Supreme Court for the District of Columbia, in which he attacked the validity of his detention. He was ordered discharged from custody, but on appeal the judgment was reversed, the decision in that case turning on the question whether petitioner, as a retired officer, was still subject to the jurisdiction of the Secretary of the Navy under R. S. § 4843. *White* v. *Treibly,* 19 F. 2d 712 (App. D. C.); see also R. 9. In June 1927, petitioner was again received at St. Elizabeths Hospital upon the order of the Secretary of the Navy (R. 5).

The present proceeding arose upon a petition for a writ of habeas corpus filed in January 1944 in the United States District Court for the District of Columbia in which petitioner attacked the legality of his confinement on the ground that at no time had he been found to be of unsound mind by any medical board or by the Commission on Mental Health of the District of Columbia, and on the further ground that he was then sane (R. 1). The writ issued (R. 2), and respondent, the Superintendent of St. Elizabeths, filed an answer in which he admitted that petitioner had

been received at the hospital upon the order of the Secretary of the Navy without having been adjudged of unsound mind in the District of Columbia, and denied that petitioner was of sound mind (R. 3–5). The district court, without apparently hearing evidence as to petitioner's mental condition, ordered his release on the ground that the commitment of petitioner to St. Elizabeths upon the order of the Secretary of the Navy "was unlawful and violative of due process," in that petitioner "was committed without a hearing upon his mental condition" (R. 6).

On appeal, the court of appeals held that petitioner, as a person in military service, could properly be committed upon the order of the Secretary of the Navy. It recognized, however, that the Secretary could not commit arbitrarily; that his order must be issued only after proper inquiry but that that did not require the rejection of "skilled military judgment on mental disease" "in favor of civilian psychiatric testimony". The court also recognized that since the Superintendent of St. Elizabeths is authorized by the statute to hold only insane persons, the remedy of habeas corpus is available to determine whether there is a sufficient showing of petitioner's present sanity, an inquiry not theretofore had, and ruled that in the event there is such a showing, the district court may order petitioner's discharge unless within five days after the entry of its order the Secre-

tary of the Navy directs that petitioner be reexamined and recommitted (R. 10–18). The court accordingly reversed the order of the district court and remanded the cause for further proceeding in conformity with its opinion (R. 18–19).

ARGUMENT

Petitioner's contention that he is illegally detained at St. Elizabeths Hospital is fundamentally a challenge to the power of the Naval authorities to determine that a member of the Naval forces is insane and to order his hospitalization and treatment accordingly. Under the statute (*supra,* p. 2), St. Elizabeths Hospital is properly used for the care of insane service personnel, and there can be no doubt that, if petitioner was properly found to be insane, he may be validly confined at St. Elizabeths rather than some naval hospital upon the order of the Secretary of the Navy. The statute and subsequent enactments in respect of the classes of persons to be admitted to St. Elizabeths (see 24 U. S. C. 191–196 (b)) show clearly that admission to that hospital is a privilege extended to certain groups of citizens found to be insane and are not *per se* lunacy statutes regulating the procedure for the determination of insanity. See *Barry* v. *Hall,* 98 F. 2d 222, 226–227 (App. D. C.). Civilians are adjudged insane; military personnel are found to be insane by

military medical authorities.[1] Both are merely transferred to St. Elizabeths for treatment.

Clearly, therefore, petitioner's contention that he is improperly detained in St. Elizabeths is not supported by proof that he was not adjudged insane in accordance with the procedure established for civilians in the District of Columbia. Neither would the absence of any judicial determination of insanity establish an illegal detention. "To those in the military or naval service of the United States, the military law is due process." *Reaves* v. *Ainsworth*, 219 U. S. 296, 304. See also *French* v. *Weeks*, 259 U. S. 326; *Creary* v. *Weeks*, 259 U. S. 336. There can be no question that the determination of the insanity of military personnel may properly be made by a military tribunal rather than by a court.

The real question in this case is whether the military procedure for the determination of insanity is constitutionally sufficient to constitute

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[1] The distinction between military personnel and civilians in this regard is of long standing. The original statute establishing an institution for the insane in the District of Columbia (Act of March 3, 1885, c. 199, 10 Stat. 682) provided for the care of insane members of the Army and Navy by order of the Secretary of War or Navy, respectively (sec. 4), and for the admission of indigent insane persons of the District of Columbia "after due process of law showing the person to be insane" (sec. 5). 24 U. S. C. 196, 196 (a), and 196 (b) provided for the admission of American citizens "legally adjudged insane" in the Canal Zone, Canada, and the Virgin Islands.

due process. The record contains no proof as to how such determination was made.[2] However, the records which we have obtained from the Navy Department show that in 1922, during the course of an examination for promotion, petitioner exhibited symptoms of mental disorder. On September 8, 1922, he was admitted to the United States Naval Hospital, in Washington, D. C., for observation. On October 27, 1922, the Naval Retiring Board recommended his retirement and its recommendation was approved on November 17, 1922. In November, 1922, he was discharged from the Naval Hospital in the custody of his wife. In October, 1923, his wife reported that she was unable to manage him and he was again admitted to the Naval Hospital. On October 31, 1923, the Board of Medical Survey recommended his transfer to St. Elizabeths.

During the period that petitioner was released from St. Elizabeths after his first habeas corpus proceeding, he was committed to the Manhattan State Hospital in New York. After the decision of the court of appeals in *White* v. *Treibly*, *supra*, at the request of his relatives he was transferred to St. Elizabeths on the recommendation

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[2] The decision of the district court was apparently based upon the ground, in accordance with the contention of petitioner, that the Secretary of the Navy cannot commit naval personnel to St. Elizabeths Hospital except after a hearing at which they have the right to present evidence and be represented by counsel (R. 6).

of the Board of Medical Survey.[2] This procedure was clearly sufficient to meet the standard laid down in the opinion of the court below (R. 10), that the determination of insanity be not arbitrarily made and that the order of the Secretary of the Navy be issued after due inquiry. The absence of a hearing with opportunity to defend would render the procedure insufficient to satisfy the test of due process which has been established for civilians. See *Barry* v. *Hall*, 98 F. 2d 222 (App. D. C.). However, as the court below pointed out (R. 10), members of the military forces are in a different position from civilians in respect of medical treatment. Military men, who in other respects are not free to go where they please when they choose, are also not free to accept or refuse medical care. An authority which may send men to battle has both the duty and the power to care for the men under its control to a degree beyond that exercised in the case of civilians. The treatment of the mentally ill is merely one aspect of such control, the importance of which has, as the court below pointed out (R. 10–11), been emphasized by the experience of World War II. Considering the special relationship which military authorities have to the persons in

[2] The procedure followed in petitioner's case conformed with that outlined in the Manual of the Medical Department of the United States Navy, published by the Bureau of Medicine and Surgery under the authority of the Secretary of the Navy (see Pars. 2151–2160).

their care, we think that the court below properly held that a determination of the necessity for medical treatment may validly be made without a hearing at which the patient is entitled to be represented by counsel and to call witnesses; that due process is satisfied if the determination is conscientiously made after appropriate inquiry. Cf. *Douglas* v. *King*, 110 F. 2d 911 (C. C. A. 8), upholding the constitutionality of the statute (18 U. S. C. 876) providing for the transfer of federal prisoners to an institution for the insane merely upon the recommendation of a board of examiners.[4]

CONCLUSION

For the foregoing reasons we respectfully submit that the petition for a writ of certiorari should be denied.

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AUGUST 1945.

[4] The question of petitioner's present sanity is not now involved since, as appears from the decision of the court below, that issue has been reserved for determination upon remand (R. 18–19).

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